

G. Variances

The board of selectmen may, unless otherwise required by law, vary the application of any provision of this by-law in any case when, in its opinion, the applicant has demonstrated that a degree of environmental protection equivalent to that required under this by-law will still be achieved, and that all other applicable requirements, including those of 527 CMR 9.00, will be met. The applicant at his own expense must notify all abutters by certified mail at least fourteen (14) days before the hearing at which such variance request will be considered. The notification shall state the variance sought and the reasons therefor. The board of selectmen shall also notify the water department, planning board, fire chief, and building inspector of any variance requested under this section, for their response in writing. Any variance granted by the board of selectmen shall be in writing; any denial of a variance shall also be in writing and shall contain a brief statement of the reasons for the denial.

H. Enforcement

1. All discharges of hazardous materials within the Water Resource District are prohibited.
2. Any persons having knowledge of any discharge of hazardous materials within such area shall immediately report the discharge to the fire department, who shall alert the board of health.
3. The board of health or its agents may enter upon privately owned property for the purpose of performing their duties under this by-law.
4. Any person who violates any provision of this by-law shall be punished by a fine of not more than one hundred dollars (\$100.00). Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one, each condition shall constitute a separate offense. Upon the request of the board of health, the board of selectmen shall take such legal action as is necessary to enforce this by-law.

I. Severability

The invalidity of any provisions of this by-law shall not affect the validity of the remainder.

Section 6 Stadium Regulations

In order to prevent danger to and/or adverse affects upon the public health, safety, or order, the following licensing procedure is hereby adopted to regulate the use of any premises upon or within which any concert, dance, exhibition, cabaret, public show of any description, theatrical exhibition, public amusement, exhibition of every description, game, sport (unless specifically excluded), fair, exposition, play, entertainment or public diversion is to be conducted. For purposes of this by-law any of the foregoing events shall be included hereafter in the term "public entertainment".

6.1A No "public entertainment" shall be conducted on any premises within the Town of Foxborough for which the number of tickets available for sale exceeds 15,000 unless a license for such public entertainment has previously been issued therefor by the board of selectmen and in accordance with the provision of this by-law.

6.1B¹

6.2 Application for such a license shall be on such form as approved by the board of selectmen, and shall be accompanied by such security plans, pedestrian and vehicular traffic plans, and other documentation as said board shall determine. Copies of any such application shall at the same time they are submitted to the board be mailed by the applicant, postage prepaid or delivered to:

- a) Chief of Police - Town of Foxborough;
- b) Fire Chief - Town of Foxborough;
- c) Chairman - Stadium Advisory Committee;
- d) Building Commissioner - Town of Foxborough;
- e) Board of Selectmen - Town of Walpole.

¹ STM December 15, 2008, Article #11, deleted section.

The foregoing public bodies or officials shall be requested to respond in writing with their recommendations and comments pertaining to such event to the board of selectmen within twenty-one (21) days of receipt of said application.

6.3 The board of selectmen shall, within forty-five (45) days following receipt of such application hold a public hearing on such application.

6.4 In addition to the notice requirements of Massachusetts General Laws, Chapter 140, Section 183A; Chapter 140, Section 181, and/or Chapter 136, Sections 4 and 14, the board shall cause, upon the completion of time permitted in Paragraph 6.2 for response by those public bodies or officials referenced in Paragraph 6.2 above, at the applicant's expense, notice of such hearing to be published twice in a newspaper published within the Town of Foxborough, or if there be no such paper then in a newspaper published in Norfolk County with general circulation in the Town of Foxborough, the first such notice to be at least fourteen (14) days prior to said hearing and the second notice to be published at least seven (7) days prior to such hearing, such notice shall state the time, date, and location of the hearing as well as the time, date, location, and the nature of the public entertainment for which the application has been submitted, together with such other information as the board shall determine. Notice of such public entertainment shall also be posted at town hall at least seven (7) days prior to any such hearing.

6.5 To the extent, if any, that any section of this by-law may be invalid, such invalidity shall not affect the validity or enforceability of the remaining sections.¹

6.6 In considering applications made pursuant to this by-law, the board of selectmen shall consider only those issues regarding the public safety, health and order, and the creation of a nuisance as are authorized within the applicable provisions of Massachusetts General Laws, Chapter 140, Section 181, Chapter 140, Section 183A; and/or Chapter 136, Sections 4 and 14.²

6.7 Subject to the foregoing provisions of this Section 6, the grant or denial of an application hereunder shall otherwise be in accordance with the applicable provisions of Massachusetts General Laws Chapter 140, Section 181; Chapter 140, Section 183A; and/or Chapter 136, Sections 4 and 14.³

6.8 Re-Sale of Tickets (scalping). No person or group shall offer for re-sale tickets for events at Foxboro Stadium for a sum higher than its face value. Violations of said regulation shall be deemed a breach of the peace.⁴

Section 7 Restriction of Public Smoking⁵

A. Restriction of Smoking in Restaurants

1. Definitions: For the purpose of this by-law, the following definitions shall apply:

a. Smoking: the lighting of, or the having in one's possession of any lighted cigar, cigarette, pipe or other tobacco product.

b. Restaurant: means restaurants with a seating capacity of forty (40) or more persons. (Bar and lounge areas, primarily devoted to the purchase and consumption of alcoholic beverages, shall be excluded in determining restaurant seating capacity.)

¹ STM March 26, 1984, Article #1.

² ATM May 13, 1985, Article #20.

³ ATM May 13, 1985, Article #20.

⁴ STM November 26, 1990, Article #12. Original Section 6.7 was omitted from the By-Laws dated March 1989, and versions thereafter. This section has been re-numbered.

⁵ ATM May 14, 1984, Article #47.

c. Non-Smoking Areas: that area of a restaurant designated and posted by the proprietor or other person in charge, where smoking by patrons or employees shall be prohibited.

d. Smoking Areas: all other areas of a restaurant unless smoking is prohibited by sanitation or fire safety codes or regulations.

2. Regulated Conduct

a. No person shall smoke in any area of a restaurant designated as a non-smoking area. This prohibition does not apply in cases in which an entire room or hall is used for a private social function and, during the course of such function, is not subject to the full control of the proprietor or person in charge of the restaurant.

b. The non-smoking area shall comprise of no less than twenty-five (25%) percent of the seating capacity of the restaurant unless otherwise provided for under Section C, Part (b).

c. In the case of restaurants consisting of a single room, the requirements of this by-law shall be considered met if one side of the room is reserved and posted as a non-smoking area, provided that the non-smoking area comprises no less than twenty-five (25%) percent of the seating capacity of the restaurant.

3. Implementation and Enforcement

a. The proprietor or person in charge of a restaurant shall make reasonable efforts to prevent smoking in the non-smoking area by:

(1) posting appropriate signs;

(2) arranging seating so that existing physical barriers and ventilation systems minimize the effects of smoking in a smoking Area on persons in an adjacent non-smoking area;

(3) directing patrons seated in a non-smoking area to refrain from smoking, and;

(4) any other means which may be appropriate.

b. The Foxborough board of health may adopt rules and regulations to effectuate the purposes of the by-law.

c. Any person who smokes in an non-smoking area, after notice from the person in charge that such conduct violates this by-law shall be subject to a fine of not less than ten dollars (\$10.00) or more than thirty dollars (\$30.00).

d. The Foxborough board of health or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provision of the by-law may seek injunctive or other relief to enforce the provisions of this by-law in a court of competent jurisdiction.

e. Nothing in this by-law shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

4. Severability: If any provision of this by-law is declared invalid or unenforceable, the other provisions shall not be affected thereby.

B. Restriction of Smoking at Public Meetings

1. Definitions

a. Smoking: the lighting of, or the having in one's possession of any lighted cigar, cigarette, pipe or other tobacco product.

b. Public Meeting: any meeting of elected or appointed officials that has been posted in accordance with the Open Meeting Law.

2. Regulated Conduct: No person shall smoke in an area where a meeting of elected or appointed town officials is taking place, in public.

3. Implementation and Enforcement

a. "No Smoking" signs shall be posted in regular meeting rooms, and the chairman shall notify attendees who do not comply with this requirement.

b. The chairman may waive this requirement when less than seven (7) persons are present.

c. The chairman may evict a person who continues to disregard this by-law.

4. Severability: If any provision of this by-law is declared invalid or unenforceable, the other provisions shall not be affected thereby.

Section 8 Alarm Regulations¹

A. Definitions: For the purpose of this by-law, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future; words used in the plural number include the singular number; and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. The term "Alarm System" means an assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110 volt AC line, arranged to signal the presence of a hazard requiring urgent attention and to which police are expected to respond. Fire alarm systems and alarm systems which monitor temperature, smoke, humidity, or any other condition not directly related to the detection of an unauthorized intrusion into a premises or an attempted robbery at a premises are specifically excluded from the provisions of this ordinance.

2. The term "Alarm User" or "User" means any person on whose premises an alarm system is maintained within the town except for alarm systems on motor vehicles or proprietary systems. Excluded from this definition and from the coverage of this by-law are central station personnel and persons who use alarm systems to alert or signal persons within the premises in which the alarm system is located or an attempted unauthorized intrusion or holdup attempt. If such a system, however, employs an audible signal emitting sounds or a flashing light or beacon designed to signal persons outside the premises, such system shall be within the definition of "alarm system" as that term is used in this by-law and shall be subject to this by-law.

3. The term "Automatic Dialing Device" refers to an alarm system which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice message or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect.

¹ STM November 18, 1986, Article #32. Outline format re-structured, November 1991.

4. The "Central Station" means an office to which remote alarm and supervisory signaling devices are connected, where operators supervise circuits or where guards are maintained continuously to investigate signals.

5. The word "Town" means the Town of Foxborough.

6. The term "Communications Console" means the instrumentation of an alarm console at the receiving terminal of a signal line which, through both visual and audible signals, indicates activation of an alarm system at a particular location, or which indicates line trouble.

7. The term "Direct Connect" means an alarm system which has the capability of transmitting system signals to and receiving them at the Foxborough Police Department Communication Center.

8. The term "False Alarm" means:

a. the activation of an alarm system through mechanical failure, malfunction, improper installation, or negligence of the user of an alarm system or of his employees or agents;

b. any signal or oral communication transmitted to the police department requesting, or requiring, or resulting in a response on the part of the police department when in fact there has been no unauthorized intrusion or attempted unauthorized intrusion into a premises and no attempted robbery or burglary at a premises. Excluded from this definition are activation's of alarm systems caused by power outages, hurricanes, tornadoes, earthquakes, and similar conditions.

9. The term "Interconnect" means to connect an alarm system to a voice-grade telephone line, either directly or through a mechanical device that utilized a standard telephone, for the purpose of using the telephone line to transmit an emergency message upon the activation of the alarm system.

10. The term "Police Chief" means the chief of police of the Town of Foxborough or his designated representative.

11. The term "Police" or "Police Department" means the Town of Foxborough Police Department or any authorized agent thereof.

B. Administrative Rules: The police chief may promulgate such rules as may be necessary for the implementation of the law.

C. Direct connections to police department

1. Alarm systems may be connected to the communications console in the police department.

2. The alarm company shall furnish, at no cost to the town, a communications console and the necessary telephone lines which are compatible to the receipt of alarm signals from alarm systems whose lines are connected to the police department. The alarm company shall set forth the annual fee each alarm user will be required to pay the alarm company for services rendered with respect to the communication console. Such services shall be set forth in the form of a written contract between the alarm company and each alarm user. The provisions of this paragraph (2) relate solely to the aforementioned communication console, connection to the said console by alarm users, and fees and charges related to the installation and maintenance of the console. Any alarm user may contract with any alarm company of his choice for the sale, installation, maintenance, and/or servicing of the alarm system to be installed on his premises.

3. The alarm user, or the alarm business contracting for servicing the alarm user's alarm system, shall be responsible for obtaining the leased telephone line between the alarm user's premises and alarm-receiving equipment at the police department and for furnishing the appropriate interface equipment, if required, in order to provide an input signal which is compatible with the receiving equipment used to operate the communications console.

4. The provisions of Section F concerning false alarms shall apply to all alarm users or persons having direct connect systems, except municipal, county, state agencies and religious organizations.

D. Control and Curtailment of Signals Emitted by Alarm Systems

1. Every alarm user shall submit to the police chief the names and telephone numbers of at least two (2) other persons who can be reached at any time, day or night, and who are authorized to respond to an emergency signal transmitted by an alarm system and who can open the premises wherein the alarm system is installed.

2. All alarm systems shall be equipped with a test device which will give a ten (10) second delay prior to alarm system activation in order to warn the alarm user of an open alarm circuit.

3. Within six (6) months from the effective date of this by-law, all alarm systems which use an audible horn or bell shall be equipped with a device which will shut off such horn or bell within ten (10) minutes after activation of the alarm system.

4. All alarm systems installed after the effective date of this by-law which use an audible horn or bell shall be equipped with a device that will shut off such horn or bell within ten (10) minutes after activation of the alarm system.

E. Testing of Equipment: No alarm system designed to transmit emergency messages directly to the police department shall be worked on, tested or demonstrated without obtaining permission from the police chief. Permission is not required to test or demonstrate alarm devices not transmitting emergency messages directly to the police department. An unauthorized test constitutes a false alarm.

F. False Alarm

1. When emergency messages are received by the police department that evidence false alarms, the police chief shall take such action as may be appropriate under paragraphs 2, 3, 4, and 5 of this section, and when so required by the terms of the aforementioned paragraphs, order that use of an alarm system to be discontinued.

2. After the police department has recorded three (3) separate false alarms within the calendar year from an alarm system, the police chief shall notify the alarm user, in writing and by certified mail, of such fact and require the said user to submit, within fifteen (15) days after receipt of such notice, a report describing efforts to discover and eliminate the cause or causes of the false alarms. If the said user, on the basis of absence from the town, or on any other reasonable basis, requests an extension of time for filing the report, the police chief may extend the fifteen (15) day period for a reasonable period. If the said user fails to submit such a written report within fifteen (15) days or within any such extended period, the police chief shall order that use of the alarm system be discontinued. Any such discontinuance shall be effectuated within fifteen (15) days from the date of receipt of the police chief's order.

3. In the event that the police chief determines that a report submitted in accordance with paragraph 2 of this section is unsatisfactory, or that the alarm user has failed to show by the report that he has taken or will take reasonable steps to eliminate or reduce false alarms, then the police chief shall order that use of the alarm system be discontinued. Any such

discontinuance shall be effectuated within fifteen (15) days from the date of receipt of the police chief's order.

4. In the event that the police department records five (5) false alarms within the calendar year from an alarm system, the police chief may order that the user of the alarm system discontinue use of the alarm system for the calendar year, but for not less than six (6) months from the date the alarm was disconnected. In the event that the police department records eight (8) false alarms within the calendar year from an alarm system, the police chief shall order that the user of the alarm system discontinue use of the alarm system for the calendar year, but for not less than six (6) months from the date the alarm was disconnected

5. Any user of an alarm system which transmits false alarms shall be assessed a fine of twenty-five dollars (\$25.00) for each false alarm in excess of three (3) occurring within the calendar year. Upon failure of the user of an alarm system to pay two (2) consecutive fines assessed hereunder within sixty (60) days of assessment, the police chief shall order that the user discontinue use of the alarm system. Any such discontinuance shall be effectuated within fifteen (15) days from the date of receipt of the police chief's order.

6. Any user of an alarm system who has, in accordance with this section, been ordered by the police chief to discontinue use of an alarm system may appeal the order of discontinuance to the board of selectmen. Notice of an appeal shall be filed with the board of selectmen within ten (10) days of the date of the order of discontinuance. Thereafter, the board shall consider the merits of the appeal, and in connection therewith shall hear evidence presented by all interested persons. After hearing such evidence, the board may affirm, vacate or modify the order of discontinuance.

7. Unpaid fines for false burglar alarms shall be known as municipal charge liens. The acceptance of this provision will allow the collector of taxes to add the unpaid fines to tax bills under the provisions of Massachusetts General Laws, Chapter 40, Section 58.¹

G. Penalties

1. The following acts and omissions shall constitute violations of this by-law punishable by fines up to fifty dollars (\$50.00):

a. failure to obey an order of the police chief to discontinue use of an alarm system, after exhaustion of the right of appeal;

b. failure to disconnect an automatic dialing service from any telephone numbers at the police department within six (6) months after the effective date of this by-law;

c. failure to pay two (2) or more consecutive fines assessed under this by-law within sixty (60) days from the date of assessment;

d. failure to comply with the requirements of Paragraph D (4) of this by-law.

2. Each day during which the aforesaid violations continue shall constitute a separate offense.

¹ STM November 26, 1990, Article #13.

Section 9 Discarded Motor Vehicle Regulation¹

A. Definitions

For the purpose of the by-law/regulation a discarded vehicle shall be one which is inoperative and unregistered, or which is worn out, cast off or discarded or which is ready for dismantling or destruction, or which has been collected or stored for salvage, or for stripping in order to make use of parts thereof. Any substantial portion from such a vehicle shall be considered discarded vehicles under this by-law/regulation.

B. General Provisions

In all zoning districts no more than one discarded motor vehicle can be stored on any parcel and that motor vehicle has to be kept or stored out of sight and/or out of the front yard(s). This shall not be required if such vehicle is enclosed within a structure provided that only one vehicle may be stored or parked outside if not visible at normal eye level from any point on an abutting lot, or if screened from view to the satisfaction of the building commissioner. This provision shall not apply to vehicles for which a permit has been granted by the board of selectmen for their storage as provided below.

C. Application Procedure

1. Anyone holding a first, second, or third class automobile license as provided by Massachusetts General Laws, Chapter 140, Section 58 shall be exempt from the provisions of this by-law/regulation.

2. A license to park or store more than one such discarded vehicle as determined above shall be obtained from the board of selectmen who will issue said license under the conditions of paragraph three of this by-law/regulation.

3. A license to keep more than one discarded vehicle may be requested by filing an application in writing with the board of selectmen.

Such fees as may from time to time be established pursuant to chapter 40, Section 22F of the General Laws shall be required to cover all expenses incurred by the permitting body.² The board of selectmen shall hold a public hearing upon such request, notice of which shall be given by publishing in a newspaper of general circulation within the Town of Foxborough at least seven (7) days prior to the date of the hearing. The filing fee will be returned if the application is rejected less the incurred cost of advertising. NOTE: No more than three (3) vehicles per lot or contiguous lots thereof will be allowed with this license.

After the public hearing has been held, the board of selectmen may grant a one (1) year license upon such conditions as the board deems proper to keep such discarded vehicles. The board shall determine that the keeping of the same will not depreciate property values in the area, will not create a hazard to public safety, and will not become a public nuisance prior to issuing such permit.

Requests for renewals of said license may be made on a yearly basis. A written request from the applicant shall be received no later than fifteen (15) days prior to the expiration date of the license. The board of selectmen will hold a public hearing if it is deemed necessary before renewing the license. The applicant shall be responsible for the costs for the public notice as noted above. All of the provisions governing notification, public hearing requirements and board of selectmen criteria to issue licenses shall apply.

4. Upon the filing with the board of selectmen of a petition signed by ten (10) taxable inhabitants of Foxborough or the office of the building commissioner asking for the revocation of a license issued by the board under the provisions of this by-law/regulation, or at the request of the building commissioner, the board of selectmen shall hold a public hearing to review the conduct of the licensee under said license. If the board determines that the operation of the licensee under said license is such as to depreciate the property values, create a hazard to the public safety, or constitute a public nuisance, the board may, by a majority vote, revoke said license. The effective date of such revocation shall be thirty (30) days after the said vote for revocation.

¹ STM November 28, 1988, Article #16.

² STM December 15, 2008, Article #13, deleted sentence, inserted new sentence.

D. Enforcement Procedure

The office of the building commissioner shall be responsible for enforcing the provisions and requirements of this by-law/regulation. If the building commissioner receives a complaint or believes by his own observations that a motor vehicle may be in violation of this by-law/regulation, he or his designee shall investigate. If the vehicle in question is found to be in violation of the above provisions, a notification sticker shall be attached to said vehicle. Subsequently, the owner of the lot where the vehicle is being illegally stored or parked shall have seven (7) days in which to remove, or cause to be removed the tagged vehicle. If the vehicle is not removed within this time period, or an agreed-to extension thereof, a fine of fifty dollars (\$50.00) per day, per vehicle shall be levied against the owner of the property where the vehicle is being stored or parked. Furthermore, the violation shall be subject to such further enforcement as may be appropriate.

Section 10 Demolition By-Law¹

A. Purpose

This by-law is proposed for the purpose of preserving and protecting significant buildings within the Town of Foxborough and to encourage owners of such buildings to seek out persons who might be willing to preserve, rehabilitate or restore such buildings rather than demolish them. To achieve these purposes the Foxborough Historical Commission (the "commission") is empowered to advise the building commissioner with respect to the issuance of permits for the demolition of significant buildings. The issuance of demolition permits for significant buildings is regulated as provided in this by-law.

B. Definitions

1. Building: any combination of materials forming a shelter for persons, animals, or property.
2. Commission: the Foxborough Historical Commission.
3. Demolition: any act of pulling down, destroying, removing or razing a building or any portion thereof, or commencing the work of total or substantial destruction with the intent of completion.
4. Demolition Permit: the permit issued by the building commissioner as required by State Building Code for the demolition or removal of a building or structure. This permit must also indicate the location of the facility at which the debris is to be disposed, in accordance with Chapter 40, Section 54 as amended in 1987.
5. Significant Building: any building or portion thereof which is fifty (50) years old or over and is not included in a historic district but which:
 - a. is listed on, or is the subject of a pending application or listing on the National Register of Historic Places; or
 - b. is included on the Cultural Resources Inventory prepared by the commission including buildings for which complete surveys may be pending.
6. Preferably-Preserved Significant Building: any significant building which the commission determines is in the public interest to be preserved or rehabilitated rather than demolished.

C. Procedure

1. Upon receipt of an application for a demolition permit for a building over fifty (50) years old, as determined by the building commissioner in reliance upon assessors' records and other pertinent documents, the building commissioner shall forward a copy thereof to the commission. No demolition permit shall be issued at that time.

¹ STM November 27, 1989, Article #14. Outline format re-structured, November, 1991.

2. After the commission has received a copy of the demolition application, it shall within thirty (30) days submit a preliminary recommendation regarding the granting of a demolition permit. If the commission issues a recommendation in favor of the granting of such permit, a demolition permit will be issued by the building commissioner. If the commission issues a recommendation in opposition to the granting of such a permit for demolition, no permit shall be issued until a more thorough investigation and a public hearing is undertaken and a final recommendation is provided by the commission. Such investigation, public hearing and recommendation shall be completed within ninety (90) days of the original submission to the historical commission.

3. After the commission issues a preliminary recommendation in opposition to the granting of such permit for demolition, the commission shall fix a reasonable time for the public hearing on the application in question. The commission shall publish notice of time, place and purpose of the hearing in a local newspaper at least fourteen (14) days before said hearing and also, within seven (7) days of said hearing, mail a copy of said notice to the applicant, to the owners of all property deemed to be affected thereby as they appear on the most recent tax list, to the Foxborough Historical Commission, and to such other persons as the commission shall deem entitled to notice.

4. If, after such hearing, the commission determines that the demolition of the significant building would not be detrimental to the historical or architectural heritage or resources of the town, the commission shall so notify the building commissioner of such determination. Upon receipt of such notification, or after the expiration of ninety (90) days from the date the commission received a copy of the demolition application, the building commissioner may, subject to requirements of the state building code and any other applicable laws, by-laws, rules and regulations, issue the demolition permit.

5. If the commission determines that the demolition of the significant building would be detrimental to the historical or architectural heritage or resources of the town, such building shall be considered a "preferably-preserved significant building".

6. Upon determination by the commission that the significant building which is the subject of the application for a demolition permit is a preferably-preserved significant building, the commission shall so advise the applicant and the building commissioner, and no demolition permit may be issued at least six (6) months after the date of such determination by the commission.

7. Notwithstanding Section C, paragraph 6 herein, the building commissioner may issue a demolition permit for a preferably-preserved significant building at any time after receipt of written advise from the commission to the effect that either:

- a. the commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building; or
- b. the commission is satisfied that for a least six (6) months with monthly reviews, the owner has made a continuing and reasonable effort by advertising in local, regional, state and national publications to find a buyer, tenant or restorer to preserve, rehabilitate and restore the subject building and that such efforts have been unsuccessful; or
- c. six (6) months have passed since a determination under Section C, paragraph 6 had been made by the commission.

D. Enforcement and Remedies

1. The commission and the building commissioner are each authorized to institute any and all proceedings in law or equity as they deem necessary and appropriate to obtain compliance with the requirements of this by-law, or to prevent a violation thereof.
2. No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished in violation of this by-law for a period of two (2) years after the date of the completion of such demolition. As used herein "premises" includes the parcel of land upon which the demolished significant building was located.

E. Severability

If any section, paragraph, or part of this by-law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.

Section 11 Scenic Road By-Law¹

A. Purpose: The purpose of this by-law is to increase environmental protection, maintain aesthetic qualities and preserve the historical values of designated roads in the town. The by-law regulates certain roadway repair, maintenance and reconstruction activities in order to help achieve these objectives.

B. Identification of Scenic Roads: The following roads are designated as scenic roadways as provided for in Massachusetts General Laws, Chapter 40, Section 15C. The entire length of each road on the list is protected under this by-law unless more specific limits are defined.

Allen's Way	Baker Street
Granite Street	Lakeview Road
Mill Street	North High Street
Post Road	Prospect Street
Rockhill Street	Stratton Lane
Union Street	Walnut Street
Water Street	Woodland Road

C. Definitions

1. Road: a public and/or private way, with all necessary appurtenances within its right-of-way boundaries including bridge structures, drainage systems, retaining walls, traffic control devices and sidewalks, but not including intersecting streets or driveways.
2. Tree: a perennial plant having a permanent, woody, self-supporting main stem or trunk. For the purposes of this by-law, the trunk must be a least four (4) inches in diameter when measured one (1) foot above the ground.
3. Stone Wall: a man-made set of carefully placed rocks at least eight (8) feet long and eighteen (18) inches high.

D. Procedure

1. After a road has been designated as a scenic road, any repair, maintenance, reconstruction or paving work done with respect thereto shall not involve or include the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, after a public hearing duly advertised twice in a newspaper of general circulation in the area, as to time, date, place and purpose, the last publication to occur at least seven (7) days prior to such hearing.
2. The project proponent shall, through the board of selectmen, submit a request to the planning board, copied to the town clerk, identifying the affected road(s) with the following information:

¹ STM November 27, 1989, Article #15. Outline format re-structured, November, 1991.

- a. A written description of the proposed changes to trees and stone walls, for the purpose of publication in a local newspaper as part of the public hearing announcement.
 - b. A list of the owners of land abutting the scenic road(s) on which the proposed work is to be performed, and, if the proposed work is only for a section of a scenic road, a list of the owners of land abutting and within one hundred (100) feet of the section.
 - c. All trees and walls proposed for removal or alteration must be posted no more than thirty (30) days prior to submittal of the request to the board of selectmen. Posting must be completed at least fourteen (14) days prior to the public hearing.
 - d. A plan and explanatory material must be provided to the planning board at least fourteen (14) days prior to the public hearing. Prior to submission to the planning board, this material must be judged adequate by the tree warden. It shall also specify the dates on which the subject trees and walls were posted.
 - e. A deposit sufficient to cover the expense of advertising and notification.
3. The planning board shall hold a public hearing within thirty (30) days from the date the notice of submittal is received by the town clerk, and will make a decision within fifteen (15) days after the hearing is initiated. Lack of a decision will be deemed to be approval of the plan.

E. Review Guidelines

- 1. The following elements shall be considered by the planning board when reviewing proposed projects on Scenic Roads:
 - a. impact on natural, environmental and historic resources;
 - b. safety to the public and urgency of proposed roadwork;
 - c. existing and future traffic volume and congestion;
 - d. difference in standards, if any, between Planning Board Subdivision Regulations and those of the highway department;
 - e. compensatory or mitigatory measures proposed;
 - f. design or construction alternatives to proposed actions, and the financial or visual consequences of avoiding trees and stone walls; and
 - g. testimony of abutters.
- 2. Trees on road boundaries are protected under this by-law. Where boundaries are uncertain, it is presumed that a tree is within the road and on public property until the contrary is shown.
- 3. Each tree removed shall be replaced under the direction of the tree warden. Replacement trees should be planted within twenty (20) feet of that road when feasible.

F. Exceptions: Removal of diseased trees declared to be public nuisances under Massachusetts General Laws, Chapter 132, Section 11, emergency maintenance, broken limb removal and brush clearing are exempted from the provision of this by-law.

Section 12 Recycling¹

The board of selectmen are hereby authorized to adopt, and from time to time to amend, as necessary, such regulations as it shall deem in the public interest to require the recycling of any type of solid waste, including but not limited to paper, glass, metal and plastics.

Such regulations shall provide, at a minimum, for the separation of designated recyclable material or materials from other solid waste and shall conform to the requirements of applicable General Laws.

Such regulations shall apply to specified places of generation including at a minimum (1) places of generation within Foxborough for which the town has assumed a direct or contractual responsibility to collect, transport or dispose of municipal solid waste, and (2) all residential structures not exceeding three (3) dwelling units in any one building.

The board may establish fines for violations of such regulations not to exceed fifty dollars (\$50.00) per violation.

Section 13 Earth Removal By-Law²

In order to help protect the water storage and quality within the Town of Foxborough, and to protect the welfare of the inhabitants of the Town, the following Earth Removal By-Law is adopted pursuant to the provisions of M.G.L.A. Chapter 40, Section 21, Paragraph 17.

A. Definitions: For the purpose of the By-Law the following definitions shall apply:

1. Earth: shall include soil, loam, sand, and gravel.
2. Board: shall mean the board of selectmen of the Town of Foxborough.

B. Procedure:

No earth shall be moved from any parcel of land within the Town to another parcel either within or without the Town, except upon approval of special use permit by the Board.

All applications for such special use permits shall be accompanied by exhibits and documentation deemed necessary by the Board for the proper issuance of a permit, which may include the following:

1. Name and address of the legal owner of the land in question.
2. Name and address of the petitioner, if different.
3. Names and addresses of all owners of property within one hundred (100) feet of the land.
4. Plans of the land prepared by a registered engineer or land surveyor and indicating: tract boundaries, adjacent streets and roads, the limits of the proposed excavation, the location of all structures within two hundred (200) feet of said limits, original topography by five-foot contours, proposed final contours at five-foot intervals, and the location and proposed use of all structures and buildings to be used in connection with the removal operation. All such plans shall indicate a division of the land into acres.
5. A plan of the site indicating the depth of loam before excavation of intervals of one hundred (100) feet by means of a surveyed grid.
6. Statement of plans for the disposal of rock, tree stumps, and other waste materials, and for the drainage of the site and excavation during and after the removal operation.

¹ STM November 4, 1991, Article #19.

² ATM May 10, 1993, Article #27, add existing Revised Earth Removal By-Law.

7. A plan and specification, prepared by a registered engineer or land surveyor, for the final grading and restoration of the site. Upon receipt of an application for a permit for earth removal the Board shall:

- a) appoint a time and place for a public hearing, notice of which shall be given to the applicant, and shall be published at least fourteen (14) days before such hearing in a newspaper having a circulation in the Town.
- b) inspect the site covered by the application.
- c) the conservation commission shall be given a copy of the plans and application for review and comment at least fourteen (14) days before a public hearing.

8. Such fees as may from time to time be established pursuant to chapter 40, Section 22F of the General Laws shall be charged for making an application.¹

9. A reasonable fee shall be charged for each permit issued, in accordance with a schedule published by the board, based on the volume of gravel removal authorized by the permit. In addition, the board has the authority to retain a qualified professional engineer for the purpose of insuring that the provisions of the by-laws and the permit are complied with. Such engineers may be retained at any time either before or during the term of the permit. As a condition of the issuance of an earth removal permit, the petitioner shall agree to reimburse the Town of Foxborough for all such engineering fees and expenses associated with the permit.

C. Limitations

1. No excavation shall be permitted below the grade of a road bounding the property in question at any point nearer than three hundred (300) feet to such road.

2. No excavation below the natural grade of any tract boundary shall be permitted nearer than fifty (50) feet to such boundary. Natural vegetation shall be left and maintained on the undisturbed land for screening and noise reduction.²

3. The area excavated during the duration of the permit shall be restored to conform to the natural state of the area and surrounding areas by grading, re-topsoiling, topsoiling, and planting, so that all scars resulting from the removal operation are eliminated annually during the period of the permit and any subsequent renewals.

a) No slope shall be left unattended or in its final stage with a slope steeper than 3:1 (33%);

b) All debris, stumps, boulders, etc. shall be removed from the site and disposed of in an approved location and manner;

c) At the board of selectmen's discretion, a monthly report shall be required to be submitted to the Board stating the amount of earth removed by a field survey and measured by a registered engineer or land surveyor.³

4. (a) No loam shall be removed from the site in excess of that necessary to meet the restoration requirements.

(b) No loam shall be removed from the site that will result in having insufficient loam to provide a four (4) inch depth of loam after compaction at the time of restoration.

¹ STM December 15, 2008, Article #13, deleted section, inserted new section.

² STM November 29, 1993, Article #10.

³ STM November 29, 1993, Article #10.

5. No permit for earth removal shall be issued if such removal will:
 - a) Endanger the general health or safety or constitute a nuisance, or endanger the quality or quantity of any aquifer, groundwater or alter bodies of water.
 - b) Result in detriment to the normal use of adjacent property by reason of noise, dust, or vibration.
 - c) Result in traffic hazard in residential areas, or congestions, and physical damage on public ways.
6. (a) A special use permit for any earth removal shall not be issued for more than one year's duration.
(b) A special use permit may, following a site inspection and certification by the board that all conditions of the by-laws and permit have been completed, be reissued twice subject to the by-laws in force at the time of renewal and subject to any conditions imposed by the board, without a new application and public hearing.
7. In approving the issuance of a permit, the board shall impose reasonable requirements, conditions, limitations, and safeguards to protect the health, welfare, convenience, and safety of the public, and to promote the best interests of the neighborhood and of the town. These conditions which shall constitute a part of the permit, may include, but are not limited to, method of removal, type and location of temporary structures, hours of operations, routes for transportation of material through the town, area and depth of excavation, steepness of slopes excavated, establishment of finish grades and levels, provisions for permanent and temporary drainage, disposition of waste incident to the operation, grading, re-topsoiling, topsoiling, seeding, planting, fencing necessary for public safety, and inspection of the premises at any time by the board or its representatives. Limitations #1 and #2 may be waived when, in the opinion of the board, the best interest of the area would be served by a revised grading plan.
8. No permit shall be issued until the owner of the site has granted to the town an easement over the land in question and conveys to the town the legal right to enter upon said land with equipment and personnel for the purpose of making acceptable restoration in accordance with the approved restorations plan in the event of default of such restoration specified in the permit by the owner or his contractual representative.
9. No trucking operation shall be allowed within one (1) mile radius of any elementary school during the first hour preceding the school's opening and also during the first hour following the school's closing.
10. No loam shall be removed from the Town of Foxborough.
11. Except as provided in Paragraph 12, Article C:
No earth in excess of two hundred (200) cubic yards per acre may be removed.
It is the intent of this subparagraph that not more than two hundred (200) cubic yards of earth may be removed from any single acre of land.
12. Special use permits for earth removal in excess of two hundred (200) yards per acre may be issued only if the board of selectmen determines that, in their opinion, such issuances are in the best interests of both the town as a whole and the neighborhood surrounding the proposed operation. Any such permit shall be limited to cases where the earth removal is incidental to a primary purpose which is the construction of a facility that is in conformance with all relevant zoning regulations. The amount of earth removal in any operation approved under the provisions of this paragraph shall be limited to the minimum amount required to achieve that primary purpose.

Furthermore, permits issued under the provisions of this paragraph shall be limited to not more than twelve (12) months. One renewal of up to six (6) months may be granted at the discretion of the selectmen.

The term "facility" as used in this by-law shall be defined as those structures necessary to install the foundation and basement of a building and/or other structures together with such driveways, parking areas and septic systems as may be authorized by said permit or required by the board of health.

D. Exceptions: No special use permit shall be required for the following:

1. Moving of earth within the limits of an individual parcel or series of contiguous parcels of land in single ownership.
2. Removal of earth from an operating farm, nursery, or cemetery to the extent that such removal is necessary to the operation of same. The term operating farm as used in this Article V, Section 13.D shall be defined as a parcel of land five acres or more in area, the primary and principal use of which is agriculture and which is being actively operated for agriculture as the primary and principal use of the land and not as an accessory use¹
3. The moving and removal of earth for any municipal purpose by, or on behalf of, any department of the Town of Foxborough.
4. A non-commercial operation of moving and removal of earth within the Town of Foxborough by one (1) load not in excess of two (2) cubic yards.
5. Removal of not more than two hundred (200) cubic yards of earth from a site where a building is under construction pursuant to a building permit to the extent as may be necessary to install the foundation and basement of the building.
6. Removal of earth from a site by governmental authority to the extent as may be necessary to complete the project as planned.

E. Validity: The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

F. Penalty: Any person, firm, or corporation willfully violating, disobeying, or refusing to comply with any of the provisions of this Article V, Section 13 shall be prosecuted under the terms of M.G.L. Chapter 40, Section 21 and shall be subject to a fine of for the first offence, fifty dollars; for the second offence, one hundred dollars; and for each subsequent offence, two hundred dollars.

The Town Manager, Building Commissioner, Police Chief or any person designated by the Board, is hereby empowered to enforce this Article V, Section 13 and is hereinafter referred to as the enforcing person. The enforcing person, as an alternative to such prosecution under the terms of M.G.L. Chapter 40, Section 21, may seek enforcement through a non-criminal proceeding pursuant to the provisions of M.G.L. Chapter 40, Section 21D, in which case the penalty for violation of this Article V, Section 13 shall be two hundred dollars (\$200.00).

Each day of non-compliance with this Article V, Section 13 shall constitute a separate offense. The Board may revoke or suspend the permit of any person, firm, corporation or limited liability company holding a permit under this Article V, Section 13 if such person, etc. violates, disobeys, or fails to comply with any of the provisions of such permit or of this Article V, Section 13.²

¹ STM December 14, 2009, Article #4.

² STM December 14, 2009, Article #4.

G. Zone II, Public Water Supply¹: Within the Zone II of a public water supply the following is prohibited: The removal of soil, loam, sand, gravel or any other mineral substances within six feet of the historical high ground water table (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are re-deposited within forty-five (45) days of removal on the site to achieve a final grading greater than six feet above the historical high water mark, and except for excavations for roads, building foundations, or utility works.

Section 14 Mechanical Games Regulation²

A. The following words used in this bylaw shall have the following meanings:

1. Mechanical Game: any machine, apparatus, device or mechanism used or designed for entertainment which may be operated, set in motion, released or played by activation of a button or switch or by placing or depositing therein any coin, token, ball or any other article which would cause it to be activated for use. This definition includes but is not limited to any variety of pinball machines, electronic video games, automatic amusement devices as defined in MGL, Chapter 140, Section 177A or any other similar machine or device.
2. Board: the board of selectmen of the Town of Foxborough
3. Town: the Town of Foxborough
4. License: automatic amusement license granted by the Board permitting the operation of a mechanical game within the Town.
5. Person: any corporation, association, partnership or individual.

B. Application

1. No person shall maintain, keep, operate or offer for operation a mechanical game without first receiving a license from the board.
2. Application for a license shall be filed with the board. Each application shall include the following information:
 - a. the name of the person(s) owning and/or operating the premise.
 - b. the street and number of the premise where the mechanical game will be located.
 - c. the number and location of all entrances and exits from the premise.
 - d. a visual plan of the premise.
 - e. the exact location and number of mechanical games to be licensed.
3. At the time of the application or any renewal thereof, the applicant shall pay such fees as may from time to time be established pursuant to chapter 40, Section 22F of the General Laws.³

C. License Information

1. Applications shall be acted upon by the board within thirty (30) days after the date of submission of the application.
2. Each license shall contain the following information:

¹ STM November 29, 1993, Article #10.

² ATM May 10, 1993, Article #29.

³ STM December 15, 2008, Article #13, deleted section, inserted new section.

- a. the street and number of the premise where the mechanical games are located.
- b. the name of the person to whom the license is granted.
- c. the number and location of all licensed mechanical games.

D. Transferability and effective date

- 1. Each license must be kept on the premise where the licensed mechanical game(s) are located and must be open to view and available for inspection at all times.
- 2. No license is transferable by the licensee.
- 3. Any license, unless sooner revoked pursuant to the bylaw, shall expire on December 31 of each year.

E. Amendments and revocation

- 1. Upon written request by the licensee to the board or upon its own initiative, the board from time to time may amend any license. Licenses may be amended to reflect a change in the premise or a change in the location of any mechanical game. The fee for any change in the location of any mechanical game shall be established by the board from time to time pursuant to chapter 40, Section 22F of the General Laws.¹ The fee for any change is payable at the time of application.
- 2. Any licensee shall comply with all conditions imposed by the board. Failure to comply with any license condition shall be grounds for the board to revoke, modify, or suspend any license.

Section 15(A): Street Opening And Public Works Construction License By-Law²

I. Street Opening

A. Introduction

From time to time, it is necessary to excavate in a public way in order, for example, to install, repair, or remove utilities or install or realign a driveway including the possible removal or re-alignment of curbing and/or fencing. Excluded from the operation of this by-law is the general reconstruction or repair of public ways by the municipal or state agency responsible for the maintenance and repair of such public ways. This street opening by-law is necessary to protect the health and safety of all persons traveling on public ways and is adopted in accordance with the authority granted, inter alia, by Article 89, section 6 of the Amendments to the Massachusetts Constitution, M.G.L. Chapter 40 section 21, MGL Chapter 165 section 20, MGL Chapter 166 section 25 and MGL Chapter 166A.

B. Definitions

ADA: The Americans with Disabilities Act of 1990, as amended (42 USC 12101-12213), and the Accessibility Guidelines for Buildings and Facilities (Appendix to Part 1191) of the U.S. Architectural and Transportation Barriers Compliance Board, as amended.

Applicant: Any public utility, municipal department, person or entity who owns or exercises general responsibility and control over: (i) utility or other pipes, ducts, lines

¹ STM December 15, 2008, Article #13, deleted sentence, inserted new sentence.

² ATM May 11, 1998 - Article #21 - deleted original text and inserted new text.